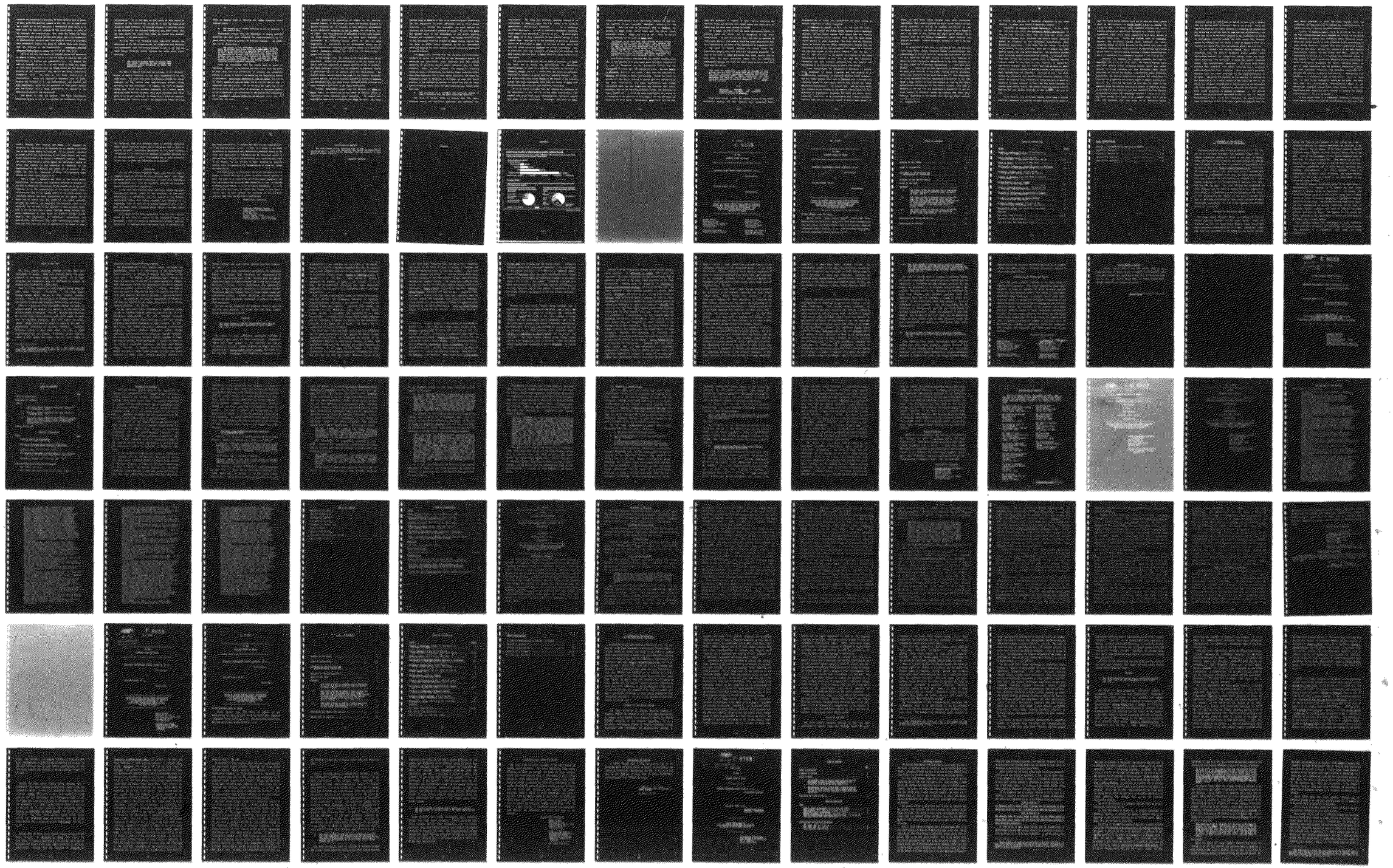
C-8353 SUPREME COURT OF TEXAS CASES 012
EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL. V. KIRBY, 1988-89
WILLIAM, ET AL. (3RD DISTRICT)



construe our Constitution precisely to avoid results such as these. In fact, given the specific mandate of art. VII, §1, we submit that for a court not to find education a fundamental right would be to cast aside the explicit language of the Constitution in favor of the justices' own predilections. Yet, those who framed the Texas Constitution have already decided this issue, and it is fundamental to constitutional analysis that "the judicial branch of government must necessarily possess the power to declare those acts invalid that are contrary to the Constitution." Government Services Insurance Underwriters v. Jones, 368 S.W.2d 560 (Tex. 1963).

This is not only the meaning of judicial review and separation of powers in Texas, but it is also the means of assuring that the Constitution is supreme and fundamental law. If, despite the explicit language of art. VII, §1 and intent of those who framed it, this Court determines that the issues herein are the exclusive province of the legislature, then how is the Texas Constitution fundamental law? How then is the Texas Constitution a Constitution? Would not legislative supremacy rule in Texas, despite the dictates of its own Constitution? And finally, and most importantly, would not the guarantee of free public schools and the meaning of the Texas Constitution be reduced to the majoritarian whims of the legislature?

The answer is clear and obvious. The Texas Constitution explicitly grants to all of its citizens the fundamental right to

an education. It is the duty of the courts of this state, as guardians of the Constitution, to see to it that the legislature abides by these mandates. If there be citizens in Texas who object to the dictates of the founding fathers of this great state, then let them follow the course that those who framed this document specified, -- let them amend it.

We urge that this Honorable Court judicially enforce the provisions of the Texas Constitution, by recognizing that education is a fundamental right and holding pursuant to art. I, §3, that the Texas School Financing System violates the state equal rights provision.

II.

THE COURT OF APPEALS ERRED IN HOLDING THAT THE ISSUES PRESENTED IN THE INSTANT CASE REGARDING PUBLIC EDUCATION IN TEXAS ARE NONJUSTICIABLE.

The Court of Appeals held that the provision of an "efficient" system of public education is the sole responsibility of the legislature. The Court with total indifference branded the issues presented in the instant case nonjusticiable without citing authority for this conclusion. In summary, the Court of Appeals stated that "given the enormous complexity of a school system educating three million children, this Court concludes that "that which is or is not 'efficient' is essentially a political question not suitable for judicial review." We respectfully submit that the

Court of Appeals erred in labeling the issues presented herein nonjusticiable.

A. The separation of powers doctrine is not in conflict in the instant case.

Respondents contend that the separation of powers doctrine prohibits the Court from reviewing the constitutionality of the Texas School Financing System. We strongly disagree. TEX.CONST. art. II, §1 states that:

> The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another; and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

First, we acknowledge that the Courts have no power to legislate. However, it is settled law that Courts have the power to pass upon the constitutionality of statutes and ultimately enforce or refuse to enforce law passed by the legislative branch of government. Brazo River Authority v. City of Graham, 354 S.W.2d 99 (1962); Golston v. City of Tyler, 262 S.W.2d 518 (Tex.Civ.App. - Texarkana 1954 writ ref'd). "It is not only the right, but it is the duty of the judicial branch of government to determine whether or not a legislative act contravenes or antagonizes the fundamental law." Friedman v. American Surety Co. of New York, 137 T. 149, 151 S.W.2d 570, 580 (1941).

The doctrine of separation of powers is not absolute. Inherent therein is the system of checks and balances designed to prevent excesses yet not intended to make effective governmental action impossible. State Bd. of Ins. v. Betts, 308 S.W.2d 846, 851-52 (1958). The three branches of government are not rigid classes. The Texas Constitution "provides for three polar functions of government; it delegates certain powers to each of three departments in distribution of all governmental powers and it blends legislative, executive and judicial powers in a great many cases." Coates v. Windham, 613 S.W.2d 572, 576 (Tex.Civ.App. - Austin 1981 no writ).

In the present case, the wisdom of the legislative act is not questioned. Rather the constitutionality of the act itself is at issue; thus the separation of powers doctrine is not in conflict. The Texas judiciary clearly has the authority to determine whether a legislative act is in conflict with the Constitution. The District Court, acting within the scope of its judicial authority, properly applied the strict scrutiny standard of review in Edgewood and determined that the Texas School Financing System violated the equal protection provision of the Texas Constitution.

Further, Respondents assert that the decision in Mumme v. Marrs, supra, is controlling on the issue of judicial review of legislative rules regarding public education. We contend that Respondents completely misinterpret the Mumme decision. The Texas

Supreme Court in Mumme held that it is constitutionally permissible for the legislature to grant additional aid to rural school districts. In reaching this conclusion, the Court applied the arbitrary and unreasonable standard of review. We note that Mumme was decided prior to the development of the strict scrutiny standard for fundamental right cases. The Supreme Court's review of the challenged education statute in Mumme clearly implies that the issue of public school financing is not an unreviewable political question nor would judicial review violate the separation of powers doctrine.

The Mumme Court reasoned that the arbitrary and unreasonable standard of review was satisfied by the legislative purpose of assisting the lower-wealth rural districts with the overall objective of providing quality public education for all Texas students. Where, as here, however, the legislative financing scheme at issue overcompensates the wealthy school districts rather than gives additional aid to poor school districts, and where the fundamental right of education is at issue, we urge that strict scrutiny is the appropriate standard of review and that the Texas School Financing System fails to pass constitutional muster under this test.

B. The provision of a suitable and efficient system of public education does not pose a political question.

The Court of Appeals erred in holding that the issues contained herein are "political questions" and therefore non-

justiciable. The bases for political question abstention is articulated in Baker v. Carr, 369 U.S. (1962): "a textually demonstrable constitutional commitment . . . to a coordinate political department", or lack of judicially manageable standards, would support such abstention. 369 U.S. at 217. We would submit that Baker is in fact supportive of the judicial review in the instant case. Application of the standards of political question abstention articulated in Baker, to the case at hand, would find that the issues raised by Edgewood are in fact justiciable. And, we might add, that this conclusion is supported for precisely the same reasons that the Court in Baker found the issues therein to be justiciable.

The similarities between the two cases is striking. In Baker the Court had to decide the justiciability of legislative reapportionment in light of a previous conclusion by the Court in Luther v. Borden, 48 U.S. 1 (1849) that the issue was textually committed to Congress as based upon the "Guaranty Clause." Yet, and without overruling either Luther or the status of the Guaranty Clause, the Court nonetheless found that the issues in Baker were not political questions and were therefore justiciable.

It is of course contended that the language and reference to the legislature in art. VII, §1 of the Texas Constitution, with support from prior state Court interpretations, textually commits this power to the legislature. Strikingly, the Court in Baker

found the issues therein to be justiciable, despite the fact that the Guaranty Clause "textually committed" authority to the Congress. Much the same as Petitioners urge in Edgewood, the parties in Baker sought relief based upon the federal "equal protection clause." Baker, 369 U.S. at 227. Thus, as Justice Brennan speaking for the Court in Baker held:

> "Of course, as we have seen, any reliance on that clause [Guaranty Clause] would be futile. But because any reliance on the Guaranty Clause could not have succeeded it does not follow that appellants may not be heard on the equal protection claim which in fact they tender. [W]e conclude that the complaint's allegations of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision. 369 U.S. at 227.

This finding clearly indicated that the Federal Congress could not, in the exercise of a sole power grant textually committed to it, act in derogation of the Constitution itself and the limitations it placed upon the legislative power. See also Powell v. McCormack, 395 U.S. 486 (1969). Note that the parallels to Edgewood, as alluded to above, are striking. Though the "duty" to provide for free public schools is placed upon the legislature by the Texas Constitution, the Texas Constitution also places limitations upon how the legislature may exercise that power. Pointedly, and as the Petitioners herein allege, the guarantee of "equal rights" art. I, §3 of the Texas Constitution also serves as a limitation on the exercise of this "duty," and was the basis for relief in the Court below. Consequently, Baker is in fact the LEAD

CASE AND AUTHORITY in support of this Court's affirming the decision below and finding that these issues are justiciable as based upon the Texas equal protection clause.

As in Baker, we submit that the Texas Legislature cannot, in carrying forth its duties, act in derogation of the Texas Constitution. If such was not the case, and even in exercise of "sole power grants," what meaning would the Texas Constitution have as a limitation on the power of the legislature as fundamental law?

The Court of Appeals declared the issues herein non-justiciable because they lack judicially manageable standards. We cite to the Court in Baker indicating that there, and we urge as well here, the equal protection issues were not judicially unmanageable because the Court was being asked to do no more than state what the law is:

> "Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determination for which judicially manageable standards are lacking. Judicial standards under [equal protection] are well developed and familiar, and it has been open to courts since the enactment of the 14th Amendment . . .". Baker, 369 U.S. at 1618.

III.

DECISIONS RENDERED IN OTHER JURISDICTIONS SUPPORT THE DISTRICT COURT'S HOLDING IN EDGEWOOD.

Other state Courts, notably the Supreme Courts of New Jersey California, Wyoming and West Virginia have recognized their

responsibility to compel the legislatures of their states to address inequities in school financing.

In Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973), decided shortly after the United States Supreme Court's Rodriguez decision, the New Jersey Supreme Court struck down New Jersey's system of financing public schools, which like the Texas system relied heavily on local financing. The Court held the financing system to violate the New Jersey Constitution's mandate that the legislature "provide for the maintenance and support of a thorough and efficient system of free public schools," Art. IV, sec. 7, par. 6. This provision is, of course, very similar to the Texas Constitution's mandate in art. VII, §1, that the legislature "establish and make suitable provision for the support and maintenance of an efficient system of public free schools."

While acknowledging the legislature's discretion to involve local government in school financing and the absence of a constitutional requirement of statewide equality among taxpayers, the New Jersey Supreme Court held in Robinson that a thorough and efficient system of free public schools must provide for "equal educational opportunity." 303 A.2d at 294. And the Court found that standard to be violated by the state's over-reliance on local districts of tremendously disparate tax bases for public school financing. Similarly, it is inconceivable that suitable provision has been made for an efficient system of public free schools in

Texas, or that Texas school children have equal educational opportunity, when taxable property per pupil in the state's poorest school districts is $20,000 as against $14,000,000 in the wealthiest districts, and when an urban district such as Edgewood has a tax base of only $42,049 per pupil while another urban district such as the Houston Independent School District has $348,100 per pupil. Houston Chronicle, November 6, 1988 at 5H (see Appendix).

In recognition of this fact, in the case at bar, the District Court held Texas' school financing system unconstitutional and unenforceable in that "it fails to insure that each school district in this State has the same ability as every other district to obtain by state legislative appropriation or by local taxation or by both, funds for educational expenditures. . . such that each student . . . would have the same opportunity to educational funds as every other district in the state, limited only by discretion given local districts to set local tax rates."[10] This requirement in no way derogates from the legislature's discretion to opt from among a wide variety of financing systems so long as the chosen system fairly provides for all the state's children. Nor does it derogate in any way from the legislature's discretion to opt for local control in education; rather by ensuring that every local district, regardless of its wealth, will have the fiscal capacity

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10. Judgment at 21.

to furnish its children an education comparable to any other district, it makes local control a meaningful reality.

Similarly, in Serrano v. Priest (Serrano I), 96 Cal. Rptr. 601, 487 P.2d 1241 (1971) and Serrano v. Priest (Serrano II), 18 Cal. 3d 728, 135 Cal. Rptr. 345, 557 P.2d 929 (1976), the California Supreme Court overthrew the state's school financing system as violative of the California Constitution's equal protection provisions. Like Texas and New Jersey, California relied heavily on local financing, which due to unequal tax bases greatly favored the high-wealth districts. The California Supreme Court found the system unconstitutional because, in language quite like that of the New Jersey Supreme Court in Robinson and the District Court in the case at bar, "equality of educational opportunity requires that all school districts possess an equal ability in terms of revenue to provide students with substantially equal opportunities for learning." 557 P.2d at 939. The Court called the contention that decentralized financing promoted local control by enabling local districts to choose how much to spend on education "a cruel illusion" in that "far from being necessary to promote local fiscal choice, the present financing system actually deprives the less wealthy districts of that option." 487 P.2d at 1260.

In so holding, the California Supreme Court used a similar analytical framework in applying its equal protection provisions as

does the United States Supreme Court and as does the Texas Supreme Court as well pursuant to Spring Branch I.S.D. v. Stamos, 695 S.W.2d at 556. In brief, this framework provides for strict judicial scrutiny of legislation impinging on a suspect class or a fundamental right, while other legislation must only satisfy a rational basis test. Unlike the Supreme Court in Rodriguez, however, the California Supreme Court subjected its school financing scheme to strict scrutiny on the ground that under the California Constitution "discrimination in educational opportunity on the basis of district wealth involves a suspect classification, and . . . education is a fundamental interest." 557 P.2d at 951.

Likewise, in Washakie Co. School District No. One v. Herschler, 606 P. 2d 310 (Wyo. 1980), the Wyoming Supreme Court held that state's school financing system, which also relied heavily on local financing and thus disfavored lower wealth districts, to violate the Wyoming Constitution's equal protection provisions. The Wyoming Constitution requires the legislature to "provide for a complete and uniform system of public instruction." Art. II, §1. This led the Court to hold that "in light of the emphasis which the Wyoming Constitution places on education, there is no room for any conclusion but that education for the children of Wyoming is a matter of fundamental interest." 606 P. 2d at 334. The Court further held wealth to be a suspect class, 606 P. 2d at 334, and concluded that "the right to an education cannot

constitutionally be conditioned on wealth in that such a measure does not afford equal protection." 606 P. 2d at 332. While not requiring absolute per pupil equality of financing and recognizing the relevance of factors such as need and cost differentials, and while leaving it in the first instance to the legislature to devise an alternative financing scheme, the Court stated that "whatever system is adopted must not create a level of spending which is a function of wealth other than the state as whole." 606 P.2d 336.

In so holding, the Wyoming Supreme Court rejected the contention that the state's foundation school program, which ameliorated somewhat the inequalities between richer and poorer school districts, was sufficient to bring the overall financing scheme into constitutional compliance. The Court also flatly rejected the contention that school financing was a political question beyond the Court' s purview. "This is no more a political question than any other challenge to the constitutionality of statutes. Declaring the validity of the statutes in relation to the Constitution is a power vested in the Courts as one of the checks and balances contemplated by the division of the government into three departments - legislative, executive and judicial - ever since first enunciated in Marbury v. Madison, ... and carried forward into Wyoming state government by Sec. 1, Art. II, Wyoming Constitution." 606 P. 2d at 318. Similarly, the school financing issue in the case at bar is no more a political question than the

many other instances in which the Texas Supreme Court has recognized its responsibility to address the constitutionality of legislative acts as against the Texas Constitution.

Finally, in Pauley v. Kelly, 225 S. E. 2d 859 (W. Va., 1979), the West Virginia Supreme Court remanded for a trial on the merits the question of whether West Virginia's school financing system, which also relied heavily on local financing to the disadvantage of lower wealth districts, violated that state constitution's equal protection provision. Article XII, section 1 of the West Virginia Constitution, similar to New Jersey and Texas, requires the legislature to provide for " a thorough and efficient system of free schools." After exhaustively examining similar provisions in state constitutions throughout the nation, including Texas', as well as cases construing them and available legislative history, the Court concluded: "Certainly, the mandatory requirement of a thorough and efficient system of free schools ... demonstrates that education is a fundamental right in this state." 225 S. E. 2d at 878. In light of the fundamental nature of the right, the Court held that "any discriminatory classification found in the educational financing system cannot stand unless the state can demonstrate some compelling state interest to justify the unequal classification." 225 S.E. 2d at 878.

In this regard there is a fundamental difference between the United States Constitution and the Constitutions of California, New

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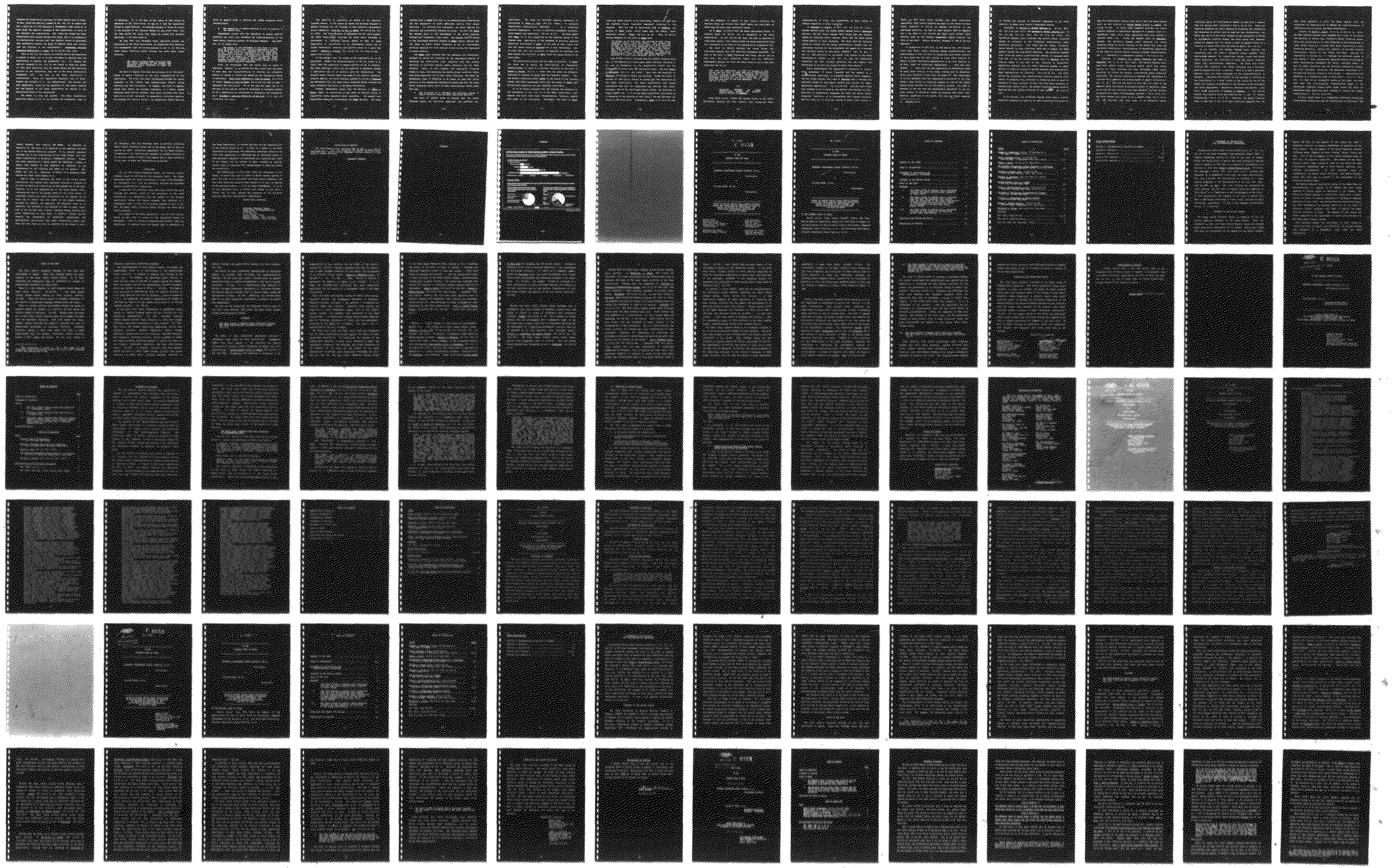

Jersey, Wyoming, West Virginia and Texas. As important as education is, the right to an education is not expressly provided for in the United States Constitution. It is, however, expressly provided for in the constitutions of all these states, and under these constitutions is therefore a fundamental interest. Indeed, the Texas Constitution's stated reason for mandating a system of public free schools is that education is "essential to the preservation of the liberties and rights of the people." TEX. CONST. art. VII, §1. Education, in short, is a paramount right because all other rights depend on it.

When a right is expressly set forth in the United States Constitution, the Supreme Court vigorously enforces it pursuant to its duty to uphold the Constitution as the supreme law of the land. Likewise, it is the responsibility of the Texas Supreme Court, following the lead of the supreme courts of its sister states, to vigorously enforce the Texas Constitution as the supreme law of Texas and to ensure that the rights of the people expressly provided for therein, and especially the paramount right to an education, are accorded to all entitled to them on equal terms. Such is not the case when a school financing scheme contains such gross inequalities as does Texas' in district revenue raising capacity and consequently in educational expenditures and opportunities, particularly when those inequalities impact most those who most need and rely on education to get ahead in life.

We, therefore, urge this Honorable Court to strictly scrutinize Texas' school financing system; and to the extent that it fails to provide for equal educational opportunity for all Texas children, as embodied in the constitutional mandates of suitable provision of an efficient system of public free schools and of equal protection of the laws, to order the legislature to so provide.

CONCLUSION

For all the reasons presented herein, the District Court's judgment should be affirmed by this Honorable Court. The rights guaranteed under the Texas Constitution in order to be meaningful as "fundamental law," must be judicially enforced and protected against unconstitutional legislation.

I urge that this Honorable Court judicially enforce the plain language and express intent of the provisions of the Texas Constitution, by recognizing that the farmers of the document specifically stated, and clearly intended, that education is a fundamental right in Texas and by holding pursuant to art. I, §3, that the Texas School Financing System violates the state equal rights provision.

As a member of the Texas Legislature, I do not find judicial review in this case an affront to the legislative branch of government, I find it a matter of constitutional process. When the legislature, in carrying forth its duties, acts in derogation of

the Texas Constitution, it becomes the duty and the responsibility of the judicial branch to act. In fact, as a member of the Texas Legislature my experiences with democratic government afford me the first hand opportunity to understand why an "efficient system of free and public education" was guaranteed as a constitutional right to all Texans, for our actions to date, untested by judicial review, serve to underscore the insightfulness of those who framed our Constitution.

The Constitution of this great state has guaranteed to all Texans, no matter what race or creed, no matter whether wealthy or poor, the right to an "efficient" and "free" public education, and this noble guarantee should be made subject to no vote, no casting of the political waters, -- it is we submit FUNDAMENTAL. It is up to this Honorable Court to enforce the dreams of more than a century ago, to make, despite the pressures of the political majority, THE TEXAS CONSTITUTION A CONSTITUTION.

Respectfully submitted,

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CERTIFICATE OF SERVICE

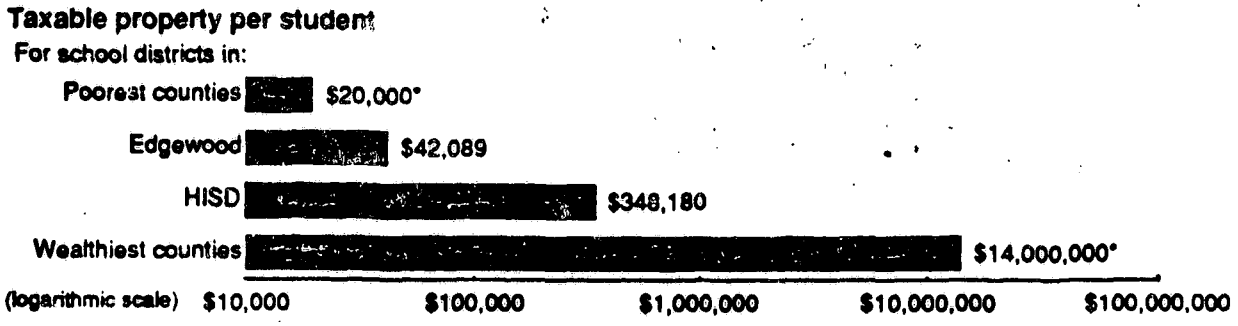
The undersigned hereby certifies that on the _____ day of _____, 1989, the foregoing was served by first-class, certified mail, return receipt requested, postage prepaid, to each group of counsel recorded.

SENFRONIA THOMPSON

APPENDIX

Achieving equity in distributing public school funds

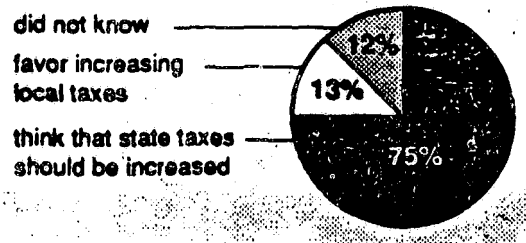
If the opinion of the state district court in Austin is upheld in Edgewood vs. Kirby, large amounts of new monies will have to be distributed to school districts which are short on taxable property.



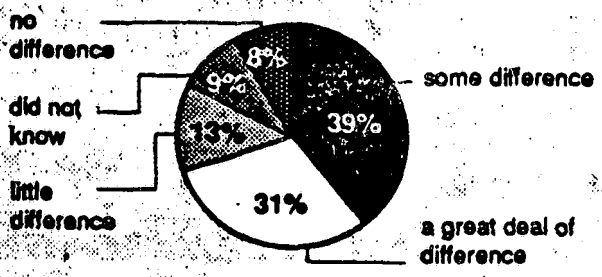
Texas Poll

State officials may be required by the court to make sure that equal monies are spent per student in all Texas school districts.

Should officials raise the money needed by increasing local taxes or by increasing state taxes?



How does the amount of money per student in a school district affect the quality of education there?



*estimate Source: Texas Poll

Marc Schneider / Chronicle

NO. C-8353

C 8353

IN THE

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Petitioners,

V.

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Respondents.

BRIEF OF AMICUS CURIAE TEXAS SENATE HISPANIC CAUCUS AND TEXAS MEXICAN AMERICAN LEGISLATIVE CAUCUS IN SUPPORT OF PETITIONERS' AND PETITIONER-INTERVENORS' APPLICATIONS FOR WRIT OF ERROR

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TO THE SUPREME COURT OF TEXAS:

Amicus Curiae, Texas Senate Hispanic Caucus and Texas Mexican American Legislative Caucus file this Brief in support of the Applications for Writ of Error filed by Petitioners, Edgewood Independent School District, et al., and Petitioner-Intervenors, Alvarado Independent School District, et al.

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STATEMENT OF JURISDICTION AND JURISPRUDENTIAL IMPORTANCE

Jurisdiction exists under Section 22.001(a)(1), (2), (3), (4), and (6) of the Texas Government Code Annotated (Vernon 1988): a lengthy dissenting opinion was filed in the court of appeals below; the Dallas Court of Appeals has ruled differently from the court of appeals in this case on a question of law material to a decision of this case, Stout v. Grand Prairie I.S.D., 733 S.W.2d, 294 (Tex.App.-- Dallas 1987, writ ref'd n.r.e.) (holding that education is a fundamental right under the Texas Constitution); this case involves the construction or validity of a state statute necessary to the determination of the case (Tex. Educ. Code §16.001, et seq.); this case involves the allocation of state revenue; and the court of appeals below has committed an error which is of "importance to the jurisprudence of the state." If left uncorrected, the judgment of the court of appeals will deny a significant percentage of Texas school children an equal educational opportunity. If ever a case demanded discretionary review, it is this one.

INTEREST OF THE AMICUS CURIAE

The Texas Senate Hispanic Caucus is composed of the six Mexican American Senators in the Texas Senate. Since its inception in 1987, the Texas Senate Hispanic Caucus has pursued equal educational opportunity for all Texans. Educational issues have been the centerpiece of the agenda for the Senate Hispanic

Caucus and each of the members of the caucus has taken a leadership position in pursuing improvement of education in the Texas schools. The six members of the caucus represent counties including Bexar, Cameron, El Paso, Hidalgo, Nueces, Travis and Webb. Five of the six members of this caucus represent areas of more than 50% minority population. Each member of the Texas Hispanic Caucus comes personally from an area which has been historically underfunded and in which Mexican Americans have suffered discrimination. We also represent areas of predominantly low wealth school districts. The Senate Hispanic Caucus sees this case as crucial to the development of the education system in Texas.

The Mexican American Legislative Caucus of the Texas House of Representatives is composed of 24 members who have joined together to pursue issues of importance to all Texans. The Caucus has joined together to pursue these issues with a concentration on issues of special importance to the Mexican American population in the state. The Mexican American Legislative Caucus has been instrumental in passing legislation in the areas of education, health, migrants, and funds to improve the human services available in Texas. The members of the Caucus are firmly committed to the improvement of equity and efficiency in the Texas school finance system.

Both caucuses support the petitioners in their effort to reverse the Court of Appeals and reinstitute the crucial finding that education is a fundamental right under the Texas Constitution.

FACTS OF THE CASE

The trial court's extensive findings of fact have been undisturbed on appeal. These fact findings depict the gross inequity of the Texas school finance system. It is these inequities and disparities that are confronted by students in property-poor districts on a daily basis.

There is a vast disparity in local property wealth among the Texas school districts. (Tr.548-50). [1] The Texas School finance system relies heavily on local district taxation. (Tr.548). These two factors result in enormous differences in the quality of educational programs offered across the State.

There is a direct positive relationship between the amount of property wealth per student in a district and the amount the district spends on education. (Tr.555). Because their tax bases are so much lower, poorer districts must tax at higher tax rates than the wealthier districts. Even with higher tax rates, however, poorer districts are unable to approach the level of expenditures maintained by wealthier districts. Wealthier districts, taxing at much lower rates, are able to spend significantly more per student. Conversely, poorer districts endure a much higher tax burden, yet are still unable to

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[1] The Transcript is cited at "Tr." The pages of the Transcript cited in this Brief contain the trial court's Findings of Fact and Conclusions of Law.

adequately fund their educational programs.

The interdependence of local property wealth, tax burden, and expenditures, which is so debilitating to the property-poor school districts, is revealed in numerous fact findings of the trial court. For example, the wealthiest school district in Texas has more than $14,000,000 of property wealth per student, while the poorest district has approximately $20,000 of property wealth per student, a ratio of 700 to 1. (Tr.548). The range of local tax rates in 1985-1986 was from $.09 (wealthy district) to $1.55 (poor district) per $100.00 valuation, a ratio in excess of 17 to 1. By comparison, the range of expenditures per student in 1985-1986 was from $2,112 per student (poor district) to $19,333 (wealthy district). (Tr. 550-52).

As the trial court found, differences in expenditure levels operate to "deprive students within the poor districts of equal educational opportunities." (Tr. 552). Increased financial support enables wealthy school districts to offer much broader and better educational experiences to their students. (Tr. 559). Such better and broader educational experiences include more extensive curricula, enhanced educational support through additional training materials and technology, improved libraries, more extensive counseling services, special programs to combat the dropout problem, parenting programs to involve the family in the student's educational experience, and lower pupil-teacher ratios. (Tr.559). In addition, districts with more property wealth are able to offer higher teacher salaries than poorer districts in their areas, allowing wealthier districts to

recruit, attract, and retain better teachers for their students. (Tr. 559).

The denial of equal educational opportunities is especially harmful to children from low-income and language-minority families. As the trial court found, "children with the greater educational needs are heavily concentrated in the State's poorest districts." (Tr.562). It is significantly more expensive to provide an equal educational opportunity to low-income children and Mexican American children than to educate higher income and non-minority children. (Tr.563). Therefore, the children whose need for an equal educational opportunity is greatest are denied this opportunity.

Not only are the disparities and inequities found to exist by the trial court shocking, they render the Texas school finance system constitutionality infirm.

ARGUMENT

I. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE STATE CONSTITUTIONAL GUARANTEE OF EQUAL RIGHTS (Op.3-13).

A.

The denial of equal educational opportunity violates a fundamental right under the Texas Constitution. "Fundamental rights have their genesis in the expressed and implied protections of personal liberty recognized in federal and state constitutions." Spring Branch I.S.D. v. Stamos, 695 S.W.2d 556, 560 (Tex.1985). Recognizing that education is "essential to the

preservation of the liberties and the rights of the people," Article VII, Section 1 imposes a mandatory duty upon the Legislature to make suitable provision for the support and maintenance of an efficient school system. Bowman v. Lumberton I.S.D., 32 Tex.Sup.Ct.J. 104, 106 (Dec. 7, 1988). Article I, Section 3 guarantees the equality of rights of all citizens. It is in these two constitutional provisions that equal educational opportunity has its genesis as a fundamental right in the Texas Constitution.

Thus, our state constitution, unlike the federal Constitution, expressly declares the fundamental importance of education. Education provides the means -- the capacity -- to exercise all critical rights and liberties. Education gives meaning and substance to other fundamental rights, such as free speech, voting, worship, and assembly, each guaranteed by the Texas Constitution. A constitutional linkage exists between education and the "essential principles of liberty and free government," protected by the Texas Bill of Rights. Tex. Const., art. I, Introduction to the Bill of Rights.

The Texas Legislature and Texas courts have also recognized that the Texas Constitution protects against the denial of equal educational opportunity. In authorizing the creation of the Gilmer-Aiken Committee to study public education in Texas, the Legislature recognized "the foresight and evident intentions of the founders of our State and the framers of our State Constitution to provide equal educational advantages for all." Tex. H.C. Res. 48, 50th Leg. (1948). Moreover, Section 16.001

of the Texas Higher Education Code, enacted in 1977, recognizes the policy of the State of Texas to provide a "thorough and efficient" education system "so that each student ... shall have access to programs and services ... that are substantially equal to those available to any other similar student, notwithstanding varying local economic factors." Two courts have concluded that Article VII, Section I's efficiency mandate connotes equality of opportunity. Mumme v. Marrs, 40 S.W.2d 31 (Tex.1931); Watson v. Sabine Royalty, 120 S.W.2d 938 (Tex.Civ.App. -- Texarkana 1938, writ ref'd). Finally, the only other Texas appellate court to directly confront the fundamental right question has concluded, citing Article VII, that education is indeed a fundamental right guaranteed by the Texas Constitution. Stout v. Grand Prairie I.S.D., 733 S.W.2d 290, 294 (Tex.App. -- Dallas 1987, writ ref'd n.r.e.).

B.

Wealth is a suspect category in the context of discrimination against low-income persons by a state school finance system. Serrano v. Priest (II), 18 Cal.3d 728, 557 P.2d 929, 957, 135 Cal.Rptr. 345 (1976). In addition, a fundamental right cannot be denied because of wealth. Shapiro v. Thompson, 394 U.S. 618, 22 L.Ed.2d 600 (1969). Justice Gammage, in his dissenting opinion, ably distinguishes San Antonio I.S.D. v. Rodriguez, 411 U.S. 1, 36 L.Ed.2d 16 (1973), the sole case relied upon by the Court of Appeals in its suspect classification analysis. (Diss.Op.9-10). The Rodriguez Court observed: "There is no basis on the record

in this case for assuming that the poorest people -- defined by reference to any level of absolute impecunity -- are concentrated in the poorest districts." 36 L.Ed.2d at 37 (emphasis added). Unlike the Rodriguez Court, this Court now benefits from a record replete with substantiated and undisputed findings on the wealth issue. (Tr. 562-565). For example, "[t]here is a pattern of a great concentration of both low-income families and students in the poor districts and an even greater concentration of both low-income students and families in the very poorest districts." (Tr.563).

C.

Because the Texas school finance system infringes upon a fundamental right and/or burdens an inherently suspect class, the system is subject to strict or heightened equal protection scrutiny. Stamos, 695 S.W.2d at 560. This standard of review requires that the infringement upon a fundamental right, or the the burden upon a suspect class must be "reasonably warranted for the achievement of a compelling governmental objective that can be achieved by no less intrusive, more reasonable means." T.S.E.U. v. Department of Mental Health, 746 S.W.2d 203, 205 (Tex.1987). The Texas school finance system surely cannot survive this heightened level of scrutiny. Even the United States Supreme Court recognized as much in Rodriguez. 36 L.Ed.2d at 33.

D.

Neither does the Texas school finance system satisfy rational basis analysis. In Whitworth v, Bynum, 699 S.W.2d 194 (Tex.1985), this Court articulated its own rational basis test to determine the reach of the equal rights provision of the Texas Constitution. Drawing upon the reasoning of Sullivan v. University Interscholastic League, 599 S.W.2d 170 (Tex.1981), the Court fashioned a "more exacting standard" of rational basis review. Whitworth, 699 S.W.2d at 196. As the Court stated in Sullivan, equal protection analysis requires the court to "reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose." Sullivan, 616 S.W.2d at 172. The Texas school finance system cannot withstand review under the Texas rational basis test. "Local control" has been proffered as a justification, but this concept marks the beginning, not the end, of the inquiry. Local control does not mean control over the formation of school district or the determination of their boundaries. This is a State function, for school districts are nothing more than "subdivisions of state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people." Lee v. Leonard I.S.D., 24 S.W.2d 449, 450 (Tex.Civ.App. -- Texarkana 1930, writ ref'd). Local control does not mean preservation of established communities of interest. For, as found by the trial court, "[n]o particular community of interest is served by the crazy quilt scheme that characterizes many of the school district lines in

Texas." (Tr.591). Local control does not mean control of the tax burden or quality of the educational product. As the trial court found, "[l]ocal control of school district operations in Texas has diminished dramatically in recent years, and today most of the meaningful incidents of the education process are determined and controlled by state statute and/or State Board of Education rule." (Tr.576).

In contrast to local control, there are two constitutionally and statutorily stated purposes underlying the Texas School finance system. First, Article VII, Section 1, of the Constitution commands the Texas Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Second, Section 16.001 of the Texas Education Code expresses the State policy that a "thorough and efficient system be provided ... so that each student ... shall have access to programs and services.... that are substantially equal to those available to any other similar student, notwithstanding varying local economic factors."

The Texas school finance system is not rationally related to any of the above-discussed alleged or actual purposes. The trial court made a number of fact findings which bear directly upon the rationality of the system. These findings reveal the vast disparity in property wealth (Tr.548-49), tax burden (Tr.553-55), and expenditures (Tr.551-60); the failure of state aid to cover the real cost of education (Tr.565-68); the absolute absence of any underlying rationale in the district boundaries of many school districts (Tr.573); and the denial of equal educational

opportunity to many Texas school children (Tr.601). The irrationality endemic to the Texas system of school finance has also been recognized, and criticized, by every serious study of public education in Texas ever undertaken, including the Statewide School Adequacy Survey, prepared for the State Board of Education in 1935; the Gilmer-Aiken Committee Report of 1948; and the Governor's Committee on Public School Education Report of 1968.

E.

Finally, the Texas system of funding public education is in no way legitimated or authorized by Article VII, Section 3 of the Texas Constitution. That section merely authorizes the Legislature to create school districts and, in turn, to authorize those districts to levy ad valorem taxes. The court of appeals would have us accept the rather strange notion that whenever the Constitution authorizes the Legislature to act, the courts are foreclosed from constitutional equal rights review of the product of the Legislature's actions. The Legislature created school districts in Texas, authorized them to tax, and allocated 50% of the funding of public education in Texas to ad valorem taxes generated from local tax bases. Inasmuch as "school districts are but subdivisions of the state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people," no amount of sophistry will permit the State to avoid judicial review of its product. Lee, 24 S.W.2d at 450.

II. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION DOES NOT MEET THE MANDATORY DUTY IMPOSED UPON THE LEGISLATURE BY THE TEXAS CONSTITUTION TO MAKE SUITABLE PROVISION FOR THE SUPPORT AND MAINTENANCE OF AN EFFICIENT PUBLIC SCHOOL SYSTEM (Op.13).

The court of appeals erred in refusing to determine whether the current system meets the constitutional duty imposed upon the Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Tex.Const.art.VII, §1. "Suitable" and "efficient" are words with meaning; they represent standards which the Legislature must meet in providing a system of public free schools. If the system falls below that standard -- if it is inefficient or not suitable -- then the Legislature has not discharged its constitutional duty and the system should be declared unconstitutional. Courts are competent to make this inquiry. The findings of the trial court, and the conclusions reached in every serious study of Texas education, reveal the gross inefficiency and inequity of the current Texas school finance system.

III. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE DUE COURSE OF LAW PROVISION OF THE TEXAS CONSTITUTION (Op.15).

State officials have thrust increasingly heavy financial burdens upon local school districts. Wealthy districts have little trouble meeting these obligations; but for poorer districts, such state-imposed mandates have required substantial increases in property tax rates. The disproportionate burdens

imposed upon poorer districts constitute deprivations of property without due course of law, in violation of Article I, Section 19 of the Texas Constitution.

CONCLUSION AND PRAYER FOR RELIEF

The trial court correctly concluded of the Texas system of funding public education: "The wealth disparities among school districts in Texas are extreme, and given the heavy reliance placed upon local property taxes in the funding of Texas public education, these disparities in property wealth among school districts result in extreme and intolerable disparities in the amounts expended for education between wealthy and poor districts with the result that children in the property poor school districts suffer a denial of equal educational opportunity." (Tr.592). For the reasons stated in this Brief, the undersigned amicus curiae request that this Court reverse the judgment of the court of appeals and affirm the judgment of the trial court. We must no longer tolerate an educational system that perpetuates such inequity and inequality and causes such harm to our children.

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I hereby certify that a true and correct copy of the foregoing Brief of Amicus Curiae in Support of Petitioners' and Petitioner-Intervenors' Applications for Writ of Error has been sent on this 9th day of March 1989, by United States Mail, postage prepaid to all counsel of record.

Hector Uribe

HECTOR URIBE

C 8353

NO. C-8353

IN THE SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, et al.,

Petitioners/Plaintiffs,

V.

WILLIAM KIRBY, et al.,

Respondents/Defendants,
Defendant-Intervenors.

AMICUS CURIAE BRIEF OF SAN ANTONIO MEXICAN AMERICAN BAR ASSOCIATION IN SUPPORT OF PETITIONERS' AND PETITIONERS-INTERVENORS' APPLICATIONS FOR WRIT OF ERROR

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Statement of Interest

The San Antonio Mexican American Bar Association is composed of approximately 125 attorneys from the private, public, corporate and judicial components of the Mexican American Bar in Bexar County, Texas. Our personal backgrounds as students in Texas public schools and our professional lives as practicing attorneys in an area of low-wealth school districts leads us to our strong support for the District Court's thoroughly documented and well reasoned decision that the Texas school finance system is unconstitutional.

The purpose of the Mexican American Bar Association of Bexar County and of Texas is to provide a method by which the organization can promote social economic and educational advancement of the Mexican-American community. The association seeks to provide assistance on matters of legal concern to the community as well as encouraging respect for the judicial system. Active participation in the legislative and educational process is essential to accomplish these goals.

In the interest of promoting equal access to education to all citizens, the Bar Association is concerned with the way the public school financing system is currently being operated in the State of Texas. In support of Petitioner's Application for Writ of Error, the Mexican American Bar Association reiterates certain findings of fact made by the Trial Court in this case that support the conclusion that equal educational

opportunity is not available to many students in the State of Texas. The Trial Court found many of the poorer districts particularly hard hit by the financing system currently being used for public schools are located throughout South Texas. These ranch and farming communities are heavily populated by Mexican-American students. Additionally, poorer districts located in the urban areas tend to be populated by minority students. In order to promote the Mexican-American Bar Association's purpose of advancing educational opportunities for minorities we hereby submit this brief praying that the Trial Court's ruling in this case be affirmed and all children of Texas be given equal access to the benefits of a sound education.

I. THE TRIAL COURT CORRECTLY HELD THAT EDUCATION IS A FUNDAMENTAL RIGHT

Article VII, Section 1 of the Texas Constitution provides Section 1, Support and Maintenance of Public Free Schools:

> A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of of the legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

Texas Const. art. I, Section 3a provides:

> Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.

The specific reference to education in the Constitution of the State of Texas raises that right of education to a higher status than is referred to in the United States Constitution. One of the major distinguishing factors in this

case, as opposed to the case of San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278 (1973), reh. den. 411 U.S. 959, 93 S.Ct. 1919 (1973), is that Rodriguez relies specifically on the United States Constitution which does not mention education. This is one reason why the Court did not find education to be a fundamental right. The State of Texas however, based on the aforementioned sections of the Texas Constitution, specifically underscores the importance of education to the framers of the Texas Constitution. In fact, the Texas Declaration of Independence in its listing of grievances against the Mexican government, made specific reference to the need for education. The Declaration stated:

> It has failed to establish any public system of education, although possessed of almost boundless resources, the public domain, and although it is an axiom in political science, that unless people are educated and enlightened, it is idle to expect the continuance of civil liberty, or the capacity for self-government.

The Declaration of Independence paragraph 9, (Tex. 1836). Moreover the Constitution of the Republic of Texas, adopted in 1836, made specific reference to education with the following provision:

> TEX. CONST. art. X, Section 1. The general diffusion of knowledge being essential to the preservation of the rights and liberties of the people, it shall be the duty of the legislature of this State to make suitable provisions for the support and maintenance of public schools.

Codification of Texas Law regarding education and its stature as a fundamental right in Texas is further evidenced

by an amendment enacted by the Texas legislature in 1975 wherein it was stated:

> It is a policy of the state of Texas that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to his or her educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors. TEX. EDUC. CODE ANN. Section 16.001 (Vernon Supp. 1988).

In addition to the statutory basis for the Trial Courts finding that education is a fundamental right there is a history of case law that reflects the same ideal. In the case of Brown v. Board of Education, 347, U.S. 483, 493 (1954), the United States Supreme Court addressed the importance of education in our free society with the following language:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education toward our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, preparing him to adjust normally to his environment. In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity where the State has undertaken to provide it, it is the right which must be made available to all on equal terms.

It is that exact finding by the Trial Court that such an education in Texas is not being provided to all school age children on equal terms that is the basis of this Application for Writ of Error.

Analogizing an earlier case in Texas wherein it was found that children of illegal aliens were entitled to free access to public schools based on federal constitutional guarantees, it necessarily follows that a guarantee of education means a guarantee of equal educational opportunity on the same footing with all students in the State of Texas. In Plyler v. Doe, 457 U.S. 202, (1982), the Court used the following language in expressing that education is a fundamental right and not merely a benefit:

> [p]ublic education is not a right granted individuals by the U.S. Constitution. But neither is it merely some governmental benefit indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction..... In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social cost borne by our nation when select groups are denied the means to absorb the values and skills upon which our social order rests.....By denying those children a basic education, we deny them ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our nation....

The Trial Court's finding that education is a fundamental right finds ample basis not only in the Texas Constitution but also in case law from this State as well as cases argued before the United States Supreme Court. Finally, the lack of an educated citizenry especially in regards to minority school children further insures that the great American dream will be more difficult to achieve by those members of the suspect class.

II. WEALTH AS A SUSPECT CLASS

There is ample case law finding that under certain circumstances wealth can be classified as a suspect class. For example, in the case of Serrano, 557 P.2d at 958, the California Supreme Court held that wealth is a suspect classification in the context of a school's finance system. Similarly in Harper v. Virginia State Board of Elections, 383 U.S. 663, 86 S. Ct. 1079, 1081 (1966), the supreme court held that the state violates the equal protection clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard.

The test used to determine if a suspect class is indeed affected by the statutory scheme is as follows:

1. Is the group saddled with disabilities?
2. Is the group subjected to a history of purposeful unequal treatment?
3. Is the group in question relegated to such a political powerlessness as to command extraordinary protection from the majoritarian political process?

It goes without saying that children from a lower socio-economic background have certain disadvantages that must be overcome in the educational process. With regards to the second prong of the test, history of purposeful unequal treatment, the district court specifically found that there has been a historical pattern of wide variation in property wealth, expenditures, and tax rates in the various school districts in Texas. The Trial Court found there has been a historical underfunding in the low wealth districts and this

inadequate funding has adverse impact on the present day operation of the poorer districts. The results are consistently negative regarding the education of the students, their ability to learn, and their ability to acquire the skills necessary to progress in the educational process.

The third part of the test, that of political powerlessness, was most adequately summarized by the Trial Court with the following language:

> Those individuals of political influence who could impact the political process by and large reside in districts of above-average wealth.

(TR. 602).

In conclusion, it is clear based on the history of the educational process in the State of Texas that the relative wealth of the school district in which a student resides directly affects the quality of education available to that student, thus making wealth a suspect class in the context of education.

III. CURRENT METHOD OF FUNDING TEXAS PUBLIC SCHOOLS DENIES EQUAL ACCESS TO EDUCATION

A look at the factual findings of the Trial Court reveal the evidence of unequal access to education. For example, for the 1985-1986 school year, one school district in Texas spent $19,333.00 per student, while another spent only $2,112.00 per student. (F.F. p.15) Range of expenditures per student unit in Texas vary from $9,523.00 to $1,060.00, an unacceptable ratio of 9 to 1. (F.F. p. 17) A great disparity exists between the average expenditure per student in the

wealthy and poor school districts. In order for the poorer school districts to compensate for their lower property values, it is necessary that they have a much higher tax rate than those in the wealthier school districts. The Trial Court found that the poorest districts' taxpayers pay a tax rate of more than $.20 per $100.00 valuation to raise $100.00 per student, while the wealthier districts can raise as much or more funds per student with tax rates of less than $.02 per $100.00 valuation. (F.F. p. 17-18) The result of such disparity in tax-raising ability is that the system prevents the poorer school districts from providing an equal educational opportunity. It is also a situation that is not likely to change any time in the near future. The poorer school districts do not have an adequate tax base to generate the required funds and there is no reason to believe the tax base will change in the current Texas economy.

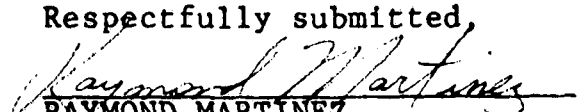
The impact of the current funding scheme on the facilities available to the various school districts is particularly problematic. The State of Texas does not participate in the funding of the public school district facilities. (F.F. p. 26) Local school district must raise the money themselves to construct and maintain the public school systems and the formula used to compute the state contribution does not factor in the costs of facilities. Id. Therefore, a greater portion of the poorer districts tax revenues goes to pay for construction and not for programs

such as school co-curricular activities, teacher aids, lower student to teacher ratios, etc. In summary, it is clear that the educational opportunities available to any particular student is directly related to the tax base of that district, a factor that cannot be controlled by the school district. No matter what fluctuations may take place in the current economy, it will never balance out the property values in the various districts in the State so as to provide equal education in each district. The state must alter the system of financing public education so as not to rely so heavily on the economic status of each geographic region. As the Trial Court found, the present school system is just not financially efficient.

Prayer for Relief

Education is a fundamental right that must be provided to all children of Texas on an equal basis. The Texas Declaration of Independence as well as the Texas Constitution clearly envisions such a reality. A major step toward resolving the inequities of the current public school funding system is to reinstate the Trial Court's judgment. Amicus prays that Petitioner's points of error be granted and that the Trial Court's judgment of June 1, 1987, be reinstated.

Respectfully submitted,



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EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.

PETITIONERS

VS.

PETITIONERS

WILLIAM KIRBY, ET AL.,

RESPONDENTS

AMICUS BRIEF OF THE TEXAS CLASSROOM TEACHERS ASSOCIATION IN SUPPORT OF PETITIONERS' APPLICATION FOR WRIT OF ERROR

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Robert Bullock, State Comptroller of Public Accountants, Respondents
State of Texas, Respondents
Jim Mattox, Attorney General of Texas, Respondents
Andrews Independent School District, Respondents
Arlington Independent School District, Respondents
Austwell Tivoli Independent School District, Respondents
Beckville Independent School District, Respondents
Carrollton-Farmers Branch Independent School District, Respondents
Carthage Independent School District, Respondents
Cleburne Independent School District, Respondents
Coppell Independent School District, Respondents
Crowley Independent School District, Respondents
DeSoto Independent School District, Respondents
Duncanville Independent School District, Respondents
Eagle Mountain-Saginaw Independent School District, Respondents
Eanes Independent School District, Respondents
Eustace Independent School District, Respondents
Glasscock County Independent School District, Respondents
Grady Independent School District, Respondents
Grand Prairie Independent School District, Respondents
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Shirley Anderson, on her own behalf and as next friend of her child Derrick Price, Petitioners
Juanita Arredondo, on her behalf and as next friend of her children Agustin Arredondo, Jr., Nora Arredondo and Sylvia Arredondo, Petitioners
Mary Cantu, on her own behalf and as next friend of her children Jose Cantu, Jesus Cantu and Tonitus Cantu, Petitioners
Josefina Castillo, on her own behalf and as next friend of her child Maria Coreno, Petitioners
Eva W. Delgado, on her own behalf and as next friend of her child Omar Delgado, Petitioners
Ramona Diaz, on her own behalf and as next friend of her children Manuel Diaz and Norma Diaz, Petitioners
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Ricardo Molina, on his own behalf and as next friend of his child Job Fernando Molina, Petitioners
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Reymundo Perez, on his own behalf and as next friend of his children Ruben Perez, Reymundo Perez, Jr., Monica Perez, Raul Perez, Rogelio Perez and Ricardo Perez, Petitioners
Patricia A. Priest, on her own behalf and as next friend of her children Alvin Priest, Stanley Priest, Carolyn Priest and Marsha Priest, Petitioners
Demetrio Rodriguez, on his own behalf and as next friend of his children Patricia Rodriguez and James Rodriguez, Petitioners
Lorenzo G. Solis, on his own behalf and as next friend of his children Javier Solis and Cynthia Solis, Petitioners
Jose A. Villalon, on his own behalf and as next friend of his children, Ruben Villalon, Rene Villalon, Maria Christina Villalon and Jaime Villalon, Petitioners
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Connie DeMarse, on her own behalf and as next friend of her children Bill DeMarse and Chad DeMarse, Petitioners
B. Halbert, on his own behalf and as next friend of his child, Elizabeth Halbert, Petitioners
Libby Lancaster, on her own behalf and as next friend of her children, Clint Lancaster, Lyndsey Lancaster, and Britt Lancaster, Petitioners
Judy Robinson, on her own behalf and as next friend of her child, Jena Cunningham, Petitioners
Frances Rodriguez, on her own behalf and as next friends of her children Ricardo Rodriguez and Raul Rodriguez, Petitioners
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NO. C-8353

IN THE

SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

PETITIONERS

VS.

PETITIONERS

WILLIAM KIRBY, ET AL.,

RESPONDENTS

AMICUS BRIEF OF THE TEXAS CLASSROOM TEACHERS ASSOCIATION IN SUPPORT OF PETITIONERS' APPLICATION FOR WRIT OF ERROR

STATEMENT OF INTEREST

The Texas Classroom Teachers Association, hereinafter referred to as TCTA, is a nonprofit organization representing over 25,000 teachers throughout the State of Texas with membership from both "rich" and "poor" districts. As a representative of Texas teachers, TCTA is committed to and interested in safeguarding and improving the quality of education in Texas. To this end, TCTA has actively participated in the Texas School Finance Symposium and the School Finance Working Group because TCTA realizes that adequate and equitable funding for education is absolutely central to an "efficient" education in Texas. TCTA has elected to support the Petitioners in this case because of the paramount importance to every teacher and citizen that Texas afford an "efficient" system of education as mandated by the State Constitution.

STATEMENT OF THE CASE

The Texas Classroom Teachers Association concurs in and adopts the statement of the case by Petitioners Edgewood Independent School District, et al. and Petitioner Intervenors, Alvarado Independent School District, et al. in their Applications for Writ of Error.

STATEMENT OF JURISDICTION

The Texas Classroom Teachers Association adopts the Statement of Jurisdiction of Petitioners - Intervenors, Alvarado Independent School District, et al., in this Application for Writ of Error.

POINT OF ERROR

The court of appeals erred in failing to hold that the Texas system of funding public education violates the constitutional guarantee that the Legislature make suitable provision for an efficient public school system (Op. 13).

BRIEF OF THE ARGUMENT

The Texas Classroom Teachers Association submits this Amicus Curiae brief in support of the Petitioners' claim that the present school system is "inefficient" in violation of Tex. Const. art. VII, §1 which provides:

> A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provisions for the support and maintenance of an efficient system of public free school.

The State of Texas has underscored its vital concern with the efficient education of its children by providing publicly supported compulsory schooling. Indeed, the Legislature has expressly acknowledged the "evident intentions of the founders of our state and the framers of the constitution to provide equal educational advantages for all." Tex. H.C. Res. 48, 50th Leg. (1948).

Accordingly, Section 16.001 of the Education Code, in language evoking article VII, section 1, makes the policy of the State that of providing a "thorough and efficient system be provided...so that each student ...shall have access to programs and services...that are substantially equal to those available to any similar student, notwithstanding varying local economic factors."

Texas has thus unequivocally mandated that education is a publicly provided governmental service for rich and poor alike, purchased not with personal wealth--in contrast to the primary reliance on the market for housing, food, and health care--but with tax dollars. And these tax dollars are constitutionally mandated to be expended on an "efficient" educational system for all. The findings of the trial court have conclusively proven, however, that the Legislature has failed to execute its mandate by the current system that relies heavily on the haphazard location of property wealth and the "equalizing" state aid from the Foundation School Program because the system has not established for to all the pupils in the state that level of educational opportunity which the constitution mandates. Quite simply, the current inefficient system forces the local districts to settle for whatever education they can afford based on widely disparate economic conditions.

Both the Petitioners' briefs in this cause and the dissenting opinion below emphasize the explicit, affirmative statement in the Texas Constitution that the Legislature provide for an "efficient" school system. The court of appeals, however, bowing in seeming deference to the clear constitutional duty of the Legislature to provide an efficient school system, concluded that the question of

what is or is not "efficient" is essentially political and, as such, "not suitable for judicial review." (Op. p. 13).

Contrary to the holding of the court below, a claim brought under Article VII, Section 1, is not a political question. Since the case plainly sets forth a case arising under the state constitution, the subject matter is within the state judicial power. Clements v. Valles, 620 S.W. 2d 112 (Tex. 1981). The words of the constitutional provision are clear and must be faithfully implemented by the Legislature. If the Legislature chooses to enlist the local school districts in its obligation to provide an efficient system of free public schools, the Legislature must do so by a plan which will fulfill its continuing obligation. If that plan falls below the standard prescribed by the constitution, then the Legislature has not discharged its constitutional duty and the system must be declared unconstitutional by the courts.

The fact that there may be political consequences flowing from a judicial review of article VII, section 1, does not give the court the ability to side step the issue by rejecting as "no law suit" a bonafide controversy." Baker v. Carr, 369 U.S. 186, 217, 7 L. Ed. 2d 663 (1962). The Amarillo Court of Appeals has stated plainly that "if (an) act of the legislature clearly violates the constitution, the courts must give effect to the language of the constitution without regard to the consequences." Vick v. Pioneer Oil Co., Western Division, 569 S.W. 2d 631. (Tex. Civ. App. - Amarillo, 1978, no writ).

In face of the overwhelming evidence chronicled by the trial court, the court of appeals is mistaken in refusing to review the gross inefficiency and inequity of the current Texas school finance

system because of some ill-founded fear of impinging upon the political balliwick. Indeed, as one commentator has noted, there are distinct advantages of judicial review under the "efficiency" provision:

> Although many states have interpreted generally applicable bills of rights provisions to guarantee equality under the law, other provisions, not usually found in bills of rights, expressly require equality in specific and limited instances. When applicable, these provisions offer state courts sound textual bases for invalidating state actions. And at the same time they warrant extending equality guarantees beyond those of federal equal protection doctrine, these provisions allow courts to avoid some of the problems of basing decisions on generally applicable equality provisions.

R. Williams, Equality Guarantees in State Constitutional Law, 63 Tex. L. Rev. 1195, 1214 (1985).

The Supreme Court indicated that the opportunity to attain the basic minimum standards of education could be held to be a fundamental right in San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 36-37, 36 L.Ed. 2d 16 (1973). The court of appeals, however, refused to find that a "patched up and overly cobbled" compulsory system which denies fully one third of its students a substantially equal educational opportunity inefficient pursuant to the constitution. Ostensibly, the court below found that no judicially manageable standards exist for determining the level of constitutionally guaranteed education. Contrary to this rationale, the courts of this state can, as the courts of other states have already shown, articulate a standard of review for a constitutionally mandated educational system that does not oblige them to decide issues of educational policy.

There are two benchmark principles by which courts determine whether or not the state school system meets the basic constitutional

requirements. One is the absolute minimum education that the Rodriguez Court hinted might be a constitutional right: " the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process." Rodriguez at 37. Many school districts today, both in Texas and across the nation, are graduating significant numbers of functional illiterates. A New York state trial court in Board of Education v. Nyquist, 94 Misc. 2d 466, 408 N.Y.S.2d 606 (Sup. Ct. 1978), found that large concentrations of students in the urban districts in New York were absolutely deprived of an education by the state-aid statute. The court thus held that the statute violated the federal equal protection clause under Rodriguez as well as the state constitution.

The second principle is that these basic minimum skills must allow the student to compete in the modern world. Contemporary society is no longer predominantly agrarian; it is now highly technological. Accordingly, the standard of what constitutes an effective education has risen to meet these more stringent demands. On the eve of the 21st century, a state cannot use the 19th century standards of reading, writing, and arithmetic as the basic educational standards.

Education today, more than ever before in history, is the key to social mobility, to breaking the poverty cycle. If the individual's education is not adequate, then his ability to participate in the contemporary political process, including the contemporary benefits of these processes is abrogated. Michelman, The Supreme Court, 1968 Term--Forward: On Protecting the Poor Through the Fourteenth Amendment, 83 Hav. L. Rev. 7,48 (1969). It would be ludicrous to hold that a state educational system meets the standard when the

educational preparation of over one-third of the State's population is woefully inadequate.

A number of state courts have focused on assuring a adequate education for all children. The leading case is Robinson v. Cahill, 62 N.J. 473,303 A.2d 273, cert. denied, 414 U.S. 976 (1973). In Robinson the New Jersey Supreme Court overturned that state's school finance scheme on the ground that it violated the state constitution's command to the legislature to provide a "thorough and efficient system of free public schools." In construing that state constitutional provision, the court stated that "the constitution's guarantee must be understood to embrace that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market."

The New Jersey system of financing public education relied heavily on local taxation to furnish approximately 67% of public school costs, which lead to a great disparity in the dollar input per pupil. The New Jersey court held that there was no relationship between the educational needs of school districts and their tax bases, "unless we were to suppose the unlikely proposition that the lowest level of dollar performance happens to coincide with the constitutional mandate and that all efforts beyond the lowest level are attributable to local decisions to do more than the state was obliged to do." Id. at 516.

However, the New Jersey court made it clear that because educational opportunity is the provision of an educational floor or basic level of adequacy, local leeway beyond that level would be allowed, "Nor do we say that if the State assumes the cost of providing the constitutionally mandated education, it may not

authorize local governments to go further..." Id at 510. Nevertheless, such authorization must not become a device for diluting the state mandated responsibility. "The end product must be what the constitution demands and a system of instruction in any district of the State which is not thorough and efficient falls short of the constitutional command and whatever the reason for the violation, the obligation is the State's to rectify it." Id.

This brief look at New Jersey's constitutional review of its educational efficiency clause illumines the fact that a Texas Court can articulate a principle of a right to an adequate education without requiring the same level of education to all children in the state or having to "legislate" the kind of education to which a child is entitled. The court, fully within its judicial power, would merely command the state to devise a system that funds that level of education which Texas has already indicated it considers basic rather than having what is an "efficient" or quality education program determined by the amount of property wealth the district controls.

CONCLUSION AND PRAYER FOR RELIEF

Because the state has declared the fundamental importance of education, making it compulsory and public, it must insure a basic level of education for all. But that basic education means more than mere reading, writing and arithmetic. Those skills don't meet the standard of "suitable" and "efficient" in today's technological society. For these reasons, Amicus Curiae Texas Classroom Teachers Association respectfully requests that this court reverse the judgment of the court of appeals and hold that the state educational system does not meet the mandatory duty imposed upon the Legislature by the Texas Constitution to make suitable provision for the support and

maintenance of an efficient public school system. The future citizens of Texas must be accorded the educational opportunities needed in today's world to equip them for their role as citizens and as potential competitors in today's market as well as the market place of ideas.

RESPECTFULLY SUBMITTED

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CERTIFICATE OF SERVICE

By my signature, I certify that a true and correct copy of the above and foregoing instrument was served upon all counsel of record in this cause, by U.S. First Class Mail, on this 24th day of March, 1989.

Tracey Whitley

C 8353

NO. C-8353

IN THE

SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Petitioners,

V.

WILLIAM KIRBY, ET AL.,

Respondents.

BRIEF OF AMICUS CURIAE TEXAS ASSOCIATION OF MEXICAN AMERICAN CHAMBERS OF COMMERCE IN SUPPORT OF PETITIONERS' AND PETITIONER-INTERVENORS'APPLICATIONS FOR WRIT OF ERROR

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NO. C-8353

IN THE

SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

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BRIEF OF AMICUS CURIAE TEXAS ASSOCIATION OF MEXICAN AMERICAN CHAMBERS OF COMMERCE IN SUPPORT OF PETITIONERS' AND PETITIONER-INTERVENORS'APPLICATIONS FOR WRIT OF ERROR

TO THE SUPREME COURT OF TEXAS:

Amicus Curiae, file this Brief in support of the Applications for Writ of Error filed by Petitioners, Edgewood Independent School District, et al., and Petitioner-Intervenors, Alvarado Independent School District, et al.

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STATEMENT OF JURISDICTION AND JURISPRUDENTIAL IMPORTANCE

Jurisdiction exists under Section 22.001(a)(1), (2), (3), (4), and (6) of the Texas Government Code Annotated (Vernon 1988): a lengthy dissenting opinion was filed in the court of appeals below; the Dallas Court of Appeals has ruled differently from the court of appeals in this case on a question of law material to a decision of this case, Stout v. Grand Prairie I.S.D., 733 S.W.2d, 294 (Tex.App.-- Dallas 1987, writ ref'd n.r.e.) (holding that education is a fundamental right under the Texas Constitution); this case involves the construction or validity of a state statute necessary to the determination of the case (Tex. Educ. Code §16.001, et seq.); this case involves the allocation of state revenue; and the court of appeals below has committed an error which is of "importance to the jurisprudence of the state." If left uncorrected, the judgment of the court of appeals will deny a significant percentage of Texas school children an equal educational opportunity. If ever a case demanded discretionary review, it is this one.

INTEREST OF THE AMICUS CURIAE

The Texas Assocation of Mexican American Chambers of Commerce (TAMACC) was founded in 1975 to encourage opportunities in commerce and to organize local programs to improve the overall economic condition of the hispanic population. It is a non-profit organization created to promote leadership through association with individuals and organizations involved in

business and trade, civic affairs, education and government within the State of Texas. Comprised originally of less than 20 business owners and interested professionals from three Texas cities, TAMACC currently assists 20 local chamber chapters with over 3,000 representatives of business and industry whose interests lie in promoting the hispanic business community and strenghtening its economic and social bases in Texas.

In pursuit of its mission, TAMACC is working with the many local chambers in the state of Texas as an advocate for hispanic and small business in the many relevant issues affecting the state's economy. One of these issues is the viability of our education system. TAMACC feels the education system in Texas is at a crucial juncture. By the year 2000, more than 50% of the population in Texas will be minorities. With our society being profoundly changed by new technology and an information-rich environment, it is critical that these minorities have an equal opportunity to contribute to our economy. They can only do so by being prepared through our current public education system.

The face of Texas society is changing. The traditional recourses of government do not appear to be working to strengthen and maintain the financial integrity of our educational system. To achieve and maintain financial integrity, it is incumbent upon the judicial branch to recognize that the present school finance system in Texas is inequitable as a whole and in its parts. The findings of fact and conclusions of law of the distirct court clearly support the decision that all students in Texas today

should have an equal opportunity to draw on the financial resources of the state. Equality of access to funds is a key and fundamental constitutional right. TAMACC feels that, unless equal access to financial resources is afforded to every student in Texas, the economic benefits accorded the citizens of our state can never truly open the door to opportunity.

It is of little consequence to a student that lives in a school district with a relatively low tax base that Texas is one of this nation's richest states in terms of natural resources. The funding mechanism for public education by design encourages the targeting of the state's largess to those priviledged to live in in a school district with a relatively rich tax base. The ability of the state of Texas to finance the education of its young citizens should not be triggered by a particular address within the state. To do so creates a new class of citizen whose access to the constitutional right of an education is preconditioned on address rather than the state's resources.

The future of this state is in the hands of our children and the generations to follow. Without equal access to the state's financial resources, the educational system of the state of Texas will continue to defraud those students who, by the vegaries of location, do not live within the areas of the state that reap the benefits of the present school finance system.

FACTS OF THE CASE

The trial court's extensive findings of fact have been undisturbed on appeal. These fact findings depict the gross

inequity of the Texas school finance system. It is these inequities and disparities that are confronted by students in property-poor districts on a daily basis.

There is a vast disparity in local property wealth among the Texas school districts. (Tr.548-50). [1] The Texas School finance system relies heavily on local district taxation. (Tr.548). These two factors result in enormous differences in the quality of educational programs offered across the State.

There is a direct positive relationship between the amount of property wealth per student in a district and the amount the district spends on education. (Tr.555). Because their tax bases are so much lower, poorer districts must tax at higher tax rates than the wealthier districts. Even with higher tax rates, however, poorer districts are unable to approach the level of expenditures maintained by wealthier districts. Wealthier districts, taxing at much lower rates, are able to spend significantly more per student. Conversely, poorer districts endure a much higher tax burden, yet are still unable to adequately fund their educational programs.

The interdependence of local property wealth, tax burden, and expenditures, which is so debilitating to the property-poor school districts, is revealed in numerous fact findings of the trial court. For example, the wealthiest school district in

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[1] The Transcript is cited at "Tr." The pages of the Transcript cited in this Brief contain the trial court's Findings of Fact and Conclusions of Law.

Texas has more than $14,000,000 of property wealth per student, while the poorest district has approximately $20,000 of property wealth per student, a ratio of 700 to 1. (Tr.548). The range of local tax rates in 1985-1986 was from $.09 (wealthy district) to $1.55 (poor district) per $100.00 valuation, a ratio in excess of 17 to 1. By comparison, the range of expenditures per student in 1985-1986 was from $2,112 per student (poor district) to $19,333 (wealthy district). (Tr. 550-52).

As the trial court found, differences in expenditure levels operate to "deprive students within the poor districts of equal educational opportunities." (Tr. 552). Increased financial support enables wealthy school districts to offer much broader and better educational experiences to their students. (Tr. 559). Such better and broader educational experiences include more extensive curricula, enhanced educational support through additional training materials and technology, improved libraries, more extensive counseling services, special programs to combat the dropout problem, parenting programs to involve the family in the student's educational experience, and lower pupil-teacher ratios. (Tr.559). In addition, districts with more property wealth are able to offer higher teacher salaries than poorer districts in their areas, allowing wealthier districts to recruit, attract, and retain better teachers for their students. (Tr. 559).

The denial of equal educational opportunities is especially harmful to children from low-income and language-minority families. As the trial court found, "children with the greater

educational needs are heavily concentrated in the State's poorest districts." (Tr.562). It is significantly more expensive to provide an equal educational opportunity to low-income children and Mexican American children than to educate higher income and non-minority children. (Tr.563). Therefore, the children whose need for an equal educational opportunity is greatest are denied this opportunity.

Not only are the disparities and inequities found to exist by the trial court shocking, they render the Texas school finance system constitutionality infirm.

ARGUMENT

I. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE STATE CONSTITUTIONAL GUARANTEE OF EQUAL RIGHTS (Op.3-13).

A.

The denial of equal educational opportunity violates a fundamental right under the Texas Constitution. "Fundamental rights have their genesis in the expressed and implied protections of personal liberty recognized in federal and state constitutions." Spring Branch I.S.D. v. Stamos, 695 S.W.2d 556, 560 (Tex.1985). Recognizing that education is "essential to the preservation of the liberties and the rights of the people," Article VII, Section 1 imposes a mandatory duty upon the Legislature to make suitable provision for the support and maintenance of an efficient school system. Bowman v. Lumberton I.S.D., 32 Tex.Sup.Ct.J. 104, 106 (Dec. 7, 1988). Article I, Section 3

guarantees the equality of rights of all citizens. It is in these two constitutional provisions that equal educational opportunity has its genesis as a fundamental right in the Texas Constitution.

Thus, our state constitution, unlike the federal Constitution, expressly declares the fundamental importance of education. Education provides the means -- the capacity -- to exercise all critical rights and liberties. Education gives meaning and substance to other fundamental rights, such as free speech, voting, worship, and assembly, each guaranteed by the Texas Constitution. A constitutional linkage exists between education and the "essential principles of liberty and free government," protected by the Texas Bill of Rights. Tex. Const., art. I, Introduction to the Bill of Rights.

The Texas Legislature and Texas courts have also recognized that the Texas Constitution protects against the denial of equal educational opportunity. In authorizing the creation of the Gilmer-Aiken Committee to study public education in Texas, the Legislature recognized "the foresight and evident intentions of the founders of our State and the framers of our State Constitution to provide equal educational advantages for all." Tex. H.C. Res. 48, 50th Leg. (1948). Moreover, Section 16.001 of the Texas Higher Education Code, enacted in 1977, recognizes the policy of the State of Texas to provide a "thorough and efficient" education system "so that each student ... shall have access to programs and services ... that are substantially equal to those available to any other similar student, notwithstanding

varying local economic factors." Two courts have concluded that Article VII, Section I's efficiency mandate connotes equality of opportunity. Mumme v. Marrs, 40 S.W.2d 31 (Tex.1931); Watson v. Sabine Royalty, 120 S.W.2d 938 (Tex.Civ.App. -- Texarkana 1938, writ ref'd). Finally, the only other Texas appellate court to directly confront the fundamental right question has concluded, citing Article VII, that education is indeed a fundamental right guaranteed by the Texas Constitution. Stout v. Grand Prairie I.S.D., 733 S.W.2d 290, 294 (Tex.App. -- Dallas 1987, writ ref'd n.r.e.).

B.

Wealth is a suspect category in the context of discrimination against local-income persons by a state school finance system. Serrano v. Priest (II), 18 Cal.3d 728, 557 P.2d 929, 957, 135 Cal.Rptr. 345 (1976). In addition, a fundamental right cannot be denied because of wealth. Shapiro v. Thompson, 394 U.S. 618, 22 L.Ed.2d 600 (1969). Justice Gammage, in his dissenting opinion, ably distinguishes San Antonio I.S.D. v. Rodriguez, 411 U.S. 1, 36 L.Ed.2d 16 (1973), the sole case relied upon by the Court of Appeals in its suspect classification analysis. (Diss.Op.9-10). The Rodriguez Court observed: "There is no basis on the record in this case for assuming that the poorest people -- defined by reference to any level of absolute impecunity -- are concentrated in the poorest districts." 36 L.Ed.2d at 37 (emphasis added). Unlike the Rodriguez Court, this Court now benefits from a record replete with substantiated and undisputed findings on the wealth

issue. (Tr. 562-565). For example, "[t]here is a pattern of a great concentration of both low-income families and students in the poor districts and an even greater concentration of both low-income students and families in the very poorest districts." (Tr.563).

C.

Because the Texas school finance system infringes upon a fundamental right and/or burdens an inherently suspect class, the system is subject to strict or heightened equal protection scrutiny. Stamos, 695 S.W.2d at 560. This standard of review requires that the infringement upon a fundamental right, or the the burden upon a suspect class must be "reasonably warranted for the achievement of a compelling governmental objective that can be achieved by no less intrusive, more reasonable means." T.S.E.U. v. Department of Mental Health, 746 S.W.2d 203, 205 (Tex.1987). The Texas school finance system surely cannot survive this heightened level of scrutiny. Even the United States Supreme Court recognized as much in Rodriguez. 36 L.Ed.2d at 33.

D.

Neither does the Texas school finance system satisfy rational basis analysis. In Whitworth v, Bynum, 699 S.W.2d 194 (Tex.1985), this Court articulated its own rational basis test to determine the reach of the equal rights provision of the Texas Constitution. Drawing upon the reasoning of Sullivan v.

University Interscholastic League, 599 S.W.2d 170 (Tex.1981), the Court fashioned a "more exacting standard" of rational basis review. Whitworth, 699 S.W.2d at 196. As the Court stated in Sullivan, equal protection analysis requires the court to "reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose." Sullivan, 616 S.W.2d at 172. The Texas school finance system cannot withstand review under the Texas rational basis test. "Local control" has been proffered as a justification, but this concept marks the beginning, not the end, of the inquiry. Local control does not mean control over the formation of school district or the determination of their boundaries. This is a State function, for school districts are nothing more than "subdivisions of state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people." Lee v. Leonard I.S.D 24 S.W.2d 449, 450 (Tex.Civ.App. -- Texarkana 1930, writ ref'd). Local control does not mean preservation of established communities of interest. For, as found by the trial court, "[n]o particular community of interest is served by the crazy quilt scheme that characterizes many of the school district lines in Texas." (Tr.591). Local control does not mean control of the tax burden or quality of the educational product. As the trial court found, "[l]ocal control of school district operations in Texas has diminished dramatically in recent years, and today most of the meaningful incidents of the education process are determined and controlled by state statute and/or State Board of

Education rule." (Tr.576).

In contrast to local control, there are two constitutionally and statutorily stated purposes underlying the Texas School finance system. First, Article VII, Section 1, of the Constitution commands the Texas Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Second, Section 16.001 of the Texas Education Code expresses the State policy that a "thorough and efficient system be provided ... so that each student ... shall have access to programs and services.... that are substantially equal to those available to any other similar student, notwithstanding varying local economic factors."

The Texas school finance system is not rationally related to any of the above-discussed alleged or actual purposes. The trial court made a number of fact findings which bear directly upon the rationality of the system. These findings reveal the vast disparity in property wealth (Tr.548-49), tax burden (Tr.553-55), and expenditures (Tr.551-60); the failure of state aid to cover the real cost of education (Tr.565-68); the absolute absence of any underlying rationale in the district boundaries of many school districts (Tr.573); and the denial of equal educational opportunity to many Texas school children (Tr.601). The irrationality endemic to the Texas system of school finance has also been recognized, and criticized, by every serious study of public education in Texas ever undertaken, including the Statewide School Adequacy Survey, prepared for the State Board of Education in 1935; the Gilmer-Aiken Committee Report of 1948; and

the Governor's Committee on Public School Education Report of 1968.

E.

Finally, the Texas system of funding public education is in no way legitimated or authorized by Article VII, Section 3 of the Texas Constitution. That section merely authorizes the Legislature to create school districts and, in turn, to authorize those districts to levy ad valorem taxes. The court of appeals would have us accept the rather strange notion that whenever the Constitution authorizes the Legislature to act, the courts are foreclosed from constitutional equal rights review of the product of the Legislature's actions. The Legislature created school districts in Texas, authorized them to tax, and allocated 50% of the funding of public education in Texas to ad valorem taxes generated from local tax bases. Inasmuch as "school districts are but subdivisions of the state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people," no amount of sophistry will permit the State to avoid judicial review of its product. Lee, 24 S.W.2d at 450.

II. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION DOES NOT MEET THE MANDATORY DUTY IMPOSED UPON THE LEGISLATURE BY THE TEXAS CONSTITUTION TO MAKE SUITABLE PROVISION FOR THE SUPPORT AND MAINTENANCE OF AN EFFICIENT PUBLIC SCHOOL SYSTEM (Op.13).

The court of appeals erred in refusing to determine whether the current system meets the constitutional duty imposed upon the

Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Tex.Const.art.VII, §1. "Suitable" and "efficient" are words with meaning; they represent standards which the Legislature must meet in providing a system of public free schools. If the system falls below that standard -- if it is inefficient or not suitable -- then the Legislature has not discharged its constitutional duty and the system should be declared unconstitutional. Courts are competent to make this inquiry. The findings of the trial court, and the conclusions reached in every serious study of Texas education, reveal the gross inefficiency and inequity of the current Texas school finance system.

III. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE DUE COURSE OF LAW PROVISION OF THE TEXAS CONSTITUTION (Op.15).

State officials have thrust increasingly heavy financial burdens upon local school districts. Wealthy districts have little trouble meeting these obligations; but for poorer districts, such state-imposed mandates have required substantial increases in property tax rates. The disproportionate burdens imposed upon poorer districts constitute deprivations of property without due course of law, in violation of Article I, Section 19 of the Texas Constitution.

CONCLUSION AND PRAYER FOR RELIEF

The trial court correctly concluded of the Texas system of funding public education: "The wealth disparities among school districts in Texas are extreme, and given the heavy reliance placed upon local property taxes in the funding of Texas public education, these disparities in property wealth among school districts result in extreme and intolerable disparities in the amounts expended for education between wealthy and poor districts with the result that children in the property poor school districts suffer a denial of equal educational opportunity." (Tr.592). For the reasons stated in this Brief, the undersigned amicus curiae request that this Court reverse the judgment of the court of appeals and affirm the judgment of the trial court. We must no longer tolerate an educational system that perpetuates such inequity and inequality and causes such harm to our children.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of Amicus Curiae in Support of Petitioners' and Petitioner-Intervenors' Applications for Writ of Error has been sent on this 15th day of March 1989, by United States Mail, postage prepaid to all counsel of record.

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NO. C-8353

IN THE

SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, et al.,

PETITIONERS/PLAINTIFFS

v.

WILLIAM N. KIRBY, et al,

RESPONDENTS/DEFENDANTS,
DEFENDANT - INTERVENORS

AMICUS CURIAE BRIEF OF TEXAS AGRICULTURE COMMISSIONER JIM HIGHTOWER IN SUPPORT OF PETITIONERS/PLAINTIFFS

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Statement of Interest

The food and fiber industry of Texas provides one out of every five jobs in the state. It generates about $74 billion of the $311 billion gross state product. Consequently, Texans must look to the food and fiber industry, which flows directly from the state's agricultural industry, for economic survival.

This year, Texas farmland values hit an 8-year low, and have declined twenty-nine percent (29%) since their peak in 1985. Texas farm debt is almost $12 billion, and Texas farm lenders hold historic levels of foreclosed farmland property. Two lenders, the Federal Land Bank and Farmers Home Administration, hold over 100,000 acres in Texas foreclosed farmland. The severe drop in farmland values and loss of land to foreclosure by lenders have severely impacted the ability of local school districts in agricultural areas to generate tax revenues.

The economic problems of agricultural areas of Texas are compounded when you consider that nationally farm-related problems have produced another twenty-five percent (25%) decline in tractor sales, has prompted the layoff of another 8,800 farm implement workers, has forced another 700 farm implement dealers to close, and has caused over 100 agricultural banks to shut their doors since 1985.

Thus, it should come as no surprise that a disproportionate share of the poor school districts in Texas are in agricultural areas of our state. The top twenty percent (20%) of our counties in agricultural receipts contain thirty-six percent (36%) of the poor school districts. Most of the poorest school districts in agricultural areas--those at the very bottom in terms of taxable property wealth, such as Edcouch-Elsa and Progreso in Hidalgo County, Santa Rosa in Cameron County, Aztell in McLennan County, Roma in Starr County, and Fabens and San Elizario in El Paso County--are in our most agriculturally-productive

areas with large farmworker populations. Most important, the poorest districts in agricultural areas have been hardest hit, and manifest the worst effects of the present system of funding Texas public schools.

Amicus contends that the present funding system and resulting inadequacies could put the very future of agriculture at risk. For the family farmer, survival depends on the ability to compete in an increasingly technical area. As noted above, economic problems in agriculture have already resulted in the loss of many family farmers. If, in addition to the economic problems, future family farmers are inadequately educated, their chances of survival are slim.

For the farmworker, lack of an adequate education is sure to result in an inability to compete in an occupation which, due to advances in mechanization and concerns with occupational safety, is also becoming increasingly technical.

POINT OF ERROR NO. 1[1]

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE ENTITLEMENT TO EQUAL EDUCATIONAL OPPORTUNITY IS NOT A FUNDAMENTAL RIGHT UNDER THE TEXAS CONSTITUTION.

POINT OF ERROR NO. 2

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE PRESENT METHOD OF FUNDING TEXAS PUBLIC SCHOOLS DOES NOT VIOLATE THE CONSTITUTIONAL GUARANTEE OF EQUAL EDUCATIONAL OPPORTUNITY.

By these points of error Amicus contends that the Honorable Court of Appeals erred in holding that the Texas system is not in violation of Article I, §3,3a and Article VII, §1 of the Texas Constitution. It has been observed that

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[1]Amicus supports the findings and conclusions of the trial court below. In this brief, Amicus will address only two of the key issues: (1) education is fundamental; and (2) the present system denies students in poor school districts equal educational opportunity.

"Education is essential in maintaining free enterprise democracy--that is preserving an individual's opportunity to compete successfully in the economic marketplace, despite a disadvantaged background. Accordingly, the public schools of the state are the bright hope and pathway for the entry of the poor and oppressed into the mainstream of American society." Serrano v. Priest, 487 P.2d 1241, 1259 (Cal. 1971). Indeed, the United States Supreme Court noted in Brown v. Board of Education: "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." 347 U.S. 483, 493 (1954). Amicus contends that the current system for funding does not provide the basic skills for successful competition in the economic marketplace and, therefore, does not meet the established Constitutional standards.

The notion that education is a fundamental right has support in the Texas Constitution, statutes and case law.

The Texas Constitution at Article VII, §1 expressly acknowledges the fundamental importance of education and imposes a mandatory duty on the Legislature to make "suitable" provisions for an "efficient" system. Mumme v. State, 120 T. 383, 40 S.W.2d 31, 35-36 (1931).

Article VII, §1, the Texas Constitution provides that, "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature...to establish and make suitable provisions for the support and maintenance of an efficient system of public free schools." (Emphasis added) Texas courts have found that entitlement to equal educational opportunity is a fundamental right under the Texas Constitution. Stout v. Grand Prairie Independent School District, 733 S.W.2d 290 (Tex.App.--Dallas 1987, writ ref'd n.r.e.) Further, the Texas

Legislature, as recently as 1975, has reiterated the importance of education and confirmed the constitutional commitment to equality of education in declaring.

> It is the policy of the State of Texas that the provision of public education is a state responsibility and that a thorough and efficient system by provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to his or her educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors. TEX. EDUC. CODE §16.001, as amended. (Emphasis added)

The majority opinion argues that although education is mentioned in the Texas Constitution, that a number of Legislative-like nonfundamental matters are also mentioned. Justice Gammage in his dissenting opinion states that the majority "opinion failed to observe that none of the (nonfundamental) matter is perceived as is education as 'being essential to the preservation of the liberties and the rights of the people' nor are they couched in constitutional language lending itself to such treatment." Amicus agrees with that analysis. In addition, the majority opinion relies on San Antonio I.S.D. v. Rodriguez, 411 U.S. 1 (1973) in determining that education is not a fundamental right. Justice Gammage in his dissenting opinion rightly distinguishes Rodriguez from the case at hand in stating that:

> Such reasoning fails to recognize that the Court in Rodriguez was relying on the federal constitution, which includes no explicit provision for education. The claim before us relies instead on the Texas Constitution, which does include such a provision, explicitly recognizes that education is indispensable to the meaningful exercise of other fundamental liberties and rights, and mandates the legislature to make 'suitable' provision for an 'efficient' education system.

Amicus agrees.

Amicus also agrees with Justice Gammage's contention that because the constitution and the Texas Education Code explicitly impose an obligation on state government with regard to education, that the state, in its efforts to provide an education system, "Is mandated to make the provision 'suitable' for

the support and maintenance of an 'efficient' system adequate to preserve other 'liberties' and rights of the people." That is, while the Texas Constitution may provide for the state to develop a "suitable" system and may provide for developing through legislative action specific methods for implementing such a system, that public education must still meet the constitutional guarantee of equal rights. This notion is confirmed in §16.001 of the Texas Education Code. Id. The Legislature has in effect done the opposite. It has created an unworkable system by, among other things, authorizing the establishment of school district boundaires that make for an inequitable distribution of local resources.

Amicus further agrees with Justice Gammage's contention that the substantial findings of the trial court regarding disparities and inadequacies in the present system are sufficient and undisputed.

Article VII, §1 of the Texas Constitution requires the state to maintain a cost-efficient, non-wasteful system of public preschools.

Amicus agrees with the trial court's undisputed findings that the present system of funding public schools is neither efficient nor equitable. Amicus further agrees with the trial court's conclusion that "the difference in expenditure levels found throughout the state are significant and meaningful in terms of the educational opportunities offered to students and the effect of these differing levels of expenditure is to deprive students within the poor districts of equal education opportunities." (TR. 552).[2] Moreover, Amicus contends that the present system of funding public schools has created two classes of public schools: a wealthy class that imposes slight tax burdens on

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[2]The transcript is cited as "TR"; all citations to the transcript refer to the trial cour's Findings of Fact and Conclusions of Law. In addition, specific Findings of Fact are cited as "F.F." with reference to the page number of the trial court's findings and conclusions as filed.